

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ASSET CO IM REST, LLC *et al.*,

Plaintiffs,

-v-

GERALD “JERRY” KATZOFF *et al.*,

Defendants.
-----X

23 Civ. 9691 (JPC)

ORDER

JOHN P. CRONAN, United States District Judge:

The Court has reviewed the parties’ submissions on Defendants’ request for a discovery stay pending their anticipated motions to dismiss, Dkt. 86 (“Defendants’ Letter”), 89 (“Plaintiffs’ Letter”), and denies the request. “[U]pon a showing of good cause[,] a district court has considerable discretion to stay discovery pursuant to [Federal Rule of Civil Procedure] 26(c).” *Morgan Art Found Ltd. v. McKenzie*, No. 18 Civ. 4438 (AT) (BCM), 2020 WL 6135113, at *2 (S.D.N.Y. Oct. 18, 2020). “In evaluating whether a stay of discovery pending resolution of a motion to dismiss is appropriate, courts typically consider: (1) whether the Defendants has made a strong showing that the plaintiff’s claim is unmeritorious; (2) the breadth of discovery and the burden of responding to it; and (3) the risk of unfair prejudice to the party opposing the stay.” *Palladino v. JPMorgan Chase & Co.*, No. 23 Civ. 1215 (MKB) (JAM), 2024 WL 312522, at *2 (E.D.N.Y. Jan. 26, 2024) (internal quotation marks omitted). “The burden is on the movant to establish that a stay is warranted.” *Nike, Inc. v. Lululemon USA Inc.*, No. 22 Civ. 82 (RA), 2023 WL 2214884, at *1 (S.D.N.Y. Feb. 24, 2023) (internal quotation marks omitted).

Turning to the first prong, and as Plaintiffs point out, the Court will not prejudge the merits of Defendants’ motions but has already found a likelihood of success on the merits as to the II

Mulino Tribeca Trade Dress-related Lanham Act claims. *See* Plaintiffs’ Letter at 1; *see generally* Dkt. 72. And while that prior finding leaves a number of other claims for which Defendants seek dismissal, Defendants do not appear to claim that their motions would entirely dispose of this case, but rather of “claims[] or even entire parties.” Defendants’ Letter at 2. As to Defendants’ objection to the breadth of discovery, “courts have declined to issue a stay where defendants fail to show why discovery would be burdensome.” *Nielsen Co. (US) LLC v. TVSquared LTD*, No. 23 Civ. 1581 (VSB), 2023 WL 4363005, at *2 (S.D.N.Y. July 6, 2023). Here, Defendants only point to one of Plaintiffs’ discovery requests—to which they can object through the ordinary course, as Plaintiffs point out, *see* Plaintiffs’ Letter at 2—and object more broadly to Plaintiffs’ “similarly expansive requests.” Defendants’ Letter at 2-3. While the Court cannot gainsay Defendants’ observation that a grant of their motions could trim the questions at issue in this matter, the Court is equally hard-pressed to grant a stay motion in the absence of “any . . . [specific] indicator that might demonstrate why discovery will be overly burdensome,” *id.* Given these two factors, even a finding of no prejudice to Plaintiffs would not counsel in favor of a stay. *See Morgan Art Found.*, 2020 WL 6135113, at *3 (“The caselaw makes it clear that no one factor is dispositive of a discovery stay motion.”).

For the foregoing reasons, Defendants’ motion for a discovery stay is denied. The Clerk of Court is respectfully directed to close Docket Number 86.

SO ORDERED.

Dated: February 21, 2024
New York, New York



JOHN P. CRONAN
United States District Judge